

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

* * * * *

PAXTON KING, as Special
Administrator of the Estate of F.M.K.,
Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,
Respondent.

* * * * *

No. 14-272V
Special Master Christian J. Moran
Filed: April 13, 2016

Stipulation; measles-mumps-rubella
("MMR") vaccine; varicella vaccine;
diphtheria-tetanus-acellular pertussis
("DTaP") vaccine; influenza ("flu")
vaccine; seizures; attorneys' fees and
costs.

Mark L. Krueger, Krueger & Hernandez, S.C., Baraboo, WI, for Petitioner;
Justine E. Walters, U.S. Department of Justice, Washington, DC, for Respondent.

UNPUBLISHED DECISION¹

On April 12, 2016, the respondent filed a joint stipulation concerning the petition for compensation filed by Paxton King as special administrator of the estate of F.M.K. In the petition, Mr. King sought compensation for injuries allegedly related to F.M.K.'s receipt of the measles, mumps, rubella; varicella; diphtheria, tetanus, and acellular pertussis; and influenza vaccines which are contained in the Vaccine Injury Table, 42 C.F.R. §100.3(a), and which F.M.K. received on September 28, 2012, causing her to suffer seizures, decrease in function, and regression in her GMI gangliosidosis. Mr. King further alleges that F.M.K. experienced residual effects of these injuries for more than six months. F.M.K. passed away on December 23, 2015. Mr. King represents that there has been no prior award or settlement of a civil action for damages on behalf of F.M.K. as a result of her condition or her death.

¹ The E-Government Act, 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services), requires that the Court post this decision on its website. Pursuant to Vaccine Rule 18(b), the parties have 14 days to file a motion proposing redaction of medical information or other information described in 42 U.S.C. § 300aa-12(d)(4). Any redactions ordered by the special master will appear in the document posted on the website.

Respondent denies that F.M.K.'s injuries were caused-in-fact by the vaccinations she received, and denies that the vaccines caused any other injury or her death.

Nevertheless, the parties agree to the joint stipulation, attached hereto as "Appendix A." The undersigned finds said stipulation reasonable and adopts it as the decision of the Court in awarding damages and attorneys' fees and costs, on the terms set forth therein.

Compensation awarded in that stipulation includes:

- a. A lump sum of \$25,000.00, in the form of a check payable to petitioner, Paxton King as legal representative of the Estate of F.M.K. This amount represents compensation for all damages that would be available under 42 U.S.C. §300aa-15(a);**
- b. A lump sum of \$87.01, in the form of a check payable to petitioner, Paxton King as legal representative of the Estate of F.M.K., for costs incurred in proceeding on this petition under 42 §300aa-15(e); and**
- c. A lump sum of \$31,012.23, in the form of a check payable jointly to petitioner and petitioner's attorney, Mark L. Krueger, of Krueger & Hernandez, S.C., for attorneys' fees and costs available under 42 U.S.C. §300aa-15(e).**

In the absence of a motion for review filed pursuant to RCFC, Appendix B, the clerk is directed to enter judgment in case 15-144V according to this decision and the attached stipulation.²

Any questions may be directed to my law clerk, Shannon Proctor, at (202) 357-6360.

IT IS SO ORDERED.

s/Christian J. Moran
Christian J. Moran
Special Master

² Pursuant to Vaccine Rule 11(a), the parties can expedite entry of judgment by each party filing a notice renouncing the right to seek review by a United States Court of Federal Claims judge.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

PAXTON KING, as Special
Administrator of the Estate of
F.M.K.,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

No. 14-272V
Special Master Moran
ECF

STIPULATION

The parties hereby stipulate to the following matters:

1. Petitioner filed a petition for vaccine compensation on behalf of his minor child, F.M.K., under the National Vaccine Injury Compensation Program, 42 U.S.C. §§ 300aa-10 to -34 ("Vaccine Program"). The petition seeks compensation for injuries allegedly related to F.M.K.'s receipt of the measles, mumps, rubella ("MMR"); varicella; diphtheria, tetanus, and acellular pertussis ("DTaP"); and influenza vaccines, which vaccines are contained in the Vaccine Injury Table ("Table"), 42 C.F.R. § 100.3(a).

2. F.M.K. received MMR, varicella, DTaP, and influenza immunizations on September 28, 2012.

3. The vaccines were administered within the United States.

4. Petitioner alleges that F.M.K. suffered seizures, decrease in function, and regression in her GM1 gangliosidosis as a result of receiving MMR, varicella, DTaP, and influenza immunizations.

5. F.M.K. passed away on December 23, 2015.

6. Petitioner represents that there has been no prior award or settlement of a civil action for damages on behalf of F.M.K. as a result of her condition or her death.

7. Respondent denies that the MMR, varicella, DTaP, or influenza vaccines caused F.M.K.'s seizures, decrease in function, regression in her GM1 gangliosidosis, or any other injury, or her death.

8. Maintaining their above-stated positions, the parties nevertheless now agree that the issues between them shall be settled and that a decision should be entered awarding the compensation described in paragraph 9 of this Stipulation.

9. As soon as practicable after an entry of judgment reflecting a decision consistent with the terms of this Stipulation, and after petitioner has filed an election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), the Secretary of Health and Human Services will issue the following vaccine compensation payments:

- a. A lump sum of \$25,000.00 in the form of a check payable to petitioner as legal representative of the Estate of F.M.K. This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a);
- b. A lump sum of \$87.01 in the form of a check payable to petitioner for costs incurred by petitioner in proceeding on this petition under 42 U.S.C. § 300aa-15(e); and
- c. A lump sum of \$31,012.23 in the form of a check payable to petitioner and petitioner's attorney, Mark Krueger, for all remaining attorneys' fees and costs available under 42 U.S.C. § 300aa-15(e).

10. Petitioner and his attorney represent that they have identified to respondent all known sources of payment for items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), including State compensation programs, insurance policies, Federal or State health benefits programs (other than Title XIX of the Social Security Act (42 U.S.C. § 1396 et seq.)), or entities that provide health services on a pre-paid basis.

11. Payments made pursuant to paragraph 9 of this Stipulation will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

12. Petitioner represents that he presently is, or within 90 days of the date of judgment will become, duly authorized to serve as legal representative of the Estate of F.M.K. under the laws of the State of Wisconsin. No payment pursuant to this Stipulation shall be made until petitioner provides the Secretary with documentation establishing his appointment as legal representative of the Estate of F.M.K. If petitioner is not authorized by a court of competent jurisdiction to serve as legal representative of the Estate of F.M.K. at the time a payment pursuant to this Stipulation is to be made, any such payment shall be paid to the party or parties appointed by a court of competent jurisdiction to serve as legal representative of the Estate of F.M.K. upon submission of written documentation of such appointment to the Secretary.

13. In return for the payments described in paragraph 9, petitioner, in his individual capacity and as legal representative of the Estate of F.M.K., on behalf of F.M.K.'s estate and her heirs, executors, administrators, successors or assigns, does forever irrevocably and unconditionally release, acquit and discharge the United States and the Secretary of Health and Human Services from any and all actions or causes of action (including agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature) that have been brought, could have been brought, or could be timely brought in the Court of Federal Claims, under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300 aa-10 et seq., on account of, or in any way growing out of, any and all known or unknown, suspected or unsuspected personal injuries to or death of F.M.K. resulting from, or alleged to have resulted from, the MMR, varicella, DTaP, and influenza vaccinations administered on September 28,

2012, as alleged by petitioner in a petition for vaccine compensation filed on or about April 8, 2014, in the United States Court of Federal Claims as petition No. 14-272V.

14. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation or if the Court of Federal Claims fails to enter judgment in conformity with a decision that is in complete conformity with the terms of this Stipulation, then the parties' settlement and this Stipulation shall be voidable at the sole discretion of either party.

15. This Stipulation expresses a full and complete negotiated settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended. There is absolutely no agreement on the part of the parties hereto to make any payment or to do any act or thing other than is herein expressly stated and clearly agreed to. The parties further agree and understand that the award described in this Stipulation may reflect a compromise of the parties' respective positions as to liability and/or amount of damages, and further, that a change in the nature of the injury or condition or in the items of compensation sought, is not grounds to modify or revise this agreement.

16. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the MMR, varicella, DTaP, or influenza vaccinations caused F.M.K.'s seizures, decrease in function, regression in her GM1 gangliosidosis, or any other injury, or her death.

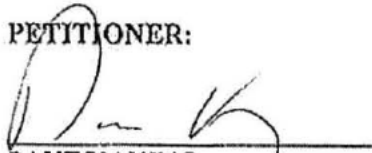
17. All rights and obligations of petitioner in his capacity as legal representative of the Estate of F.M.K. shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns.

END OF STIPULATION


/

Respectfully submitted,


PETITIONER:


PAXTON KING

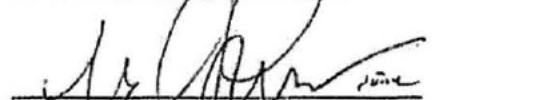
ATTORNEY OF RECORD FOR
PETITIONER:


MARK L. KRUEGER, ESQ.
Krueger & Hernandez, SC
123 2nd Street
P.O. Box 41
Baraboo, Wisconsin 53913
Tel: (608) 356-3961

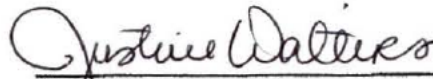
AUTHORIZED REPRESENTATIVE
OF THE ATTORNEY GENERAL:


VINCENT J. MATANOSKI
Deputy Director
Torts Branch
Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, DC 20044-0146

AUTHORIZED REPRESENTATIVE
OF THE SECRETARY OF HEALTH
AND HUMAN SERVICES:


NARAYAN NAIR, M.D.
Acting Director, Division of Injury
Compensation Programs (DICP)
Healthcare Systems Bureau
Health Resources and Services Administration
U.S. Department of Health
and Human Services
5600 Fishers Lane
Parklawn Building, Mail Stop 08N146B
Rockville, MD 20857

ATTORNEY OF RECORD FOR
RESPONDENT:


JUSTINE WALTERS
Trial Attorney
Torts Branch
Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, DC 20044-0146
(202) 307-6393

Dated: April 12, 2016